IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

GONZALO BARRIENTOS, RODNEY ELLIS, MARIO GALLEGOS, JR., JUAN "CHUY" HINOJOSA, EDDIE LUCIO, JR., FRANK L. MADLA, ELIOT SHAPLEIGH, LETICIA VAN DE PUTTE, ROYCE WEST, JOHN WHITMIRE, and JUDITH ZAFFIRINI,	)	
Plaintiffs,	)	
v.	)	
STATE OF TEXAS, RICK PERRY, In His Official Capacity As Governor Of The State of Texas; and DAVID DEWHURST, In His Official Capacity As Lieutenant Governor and Presiding Officer Of the Texas Senate,	)	CIVIL ACTION NO. L:03CV113
Defendants.	)	

MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, the eleven plaintiff Senators in the above-referenced matter[1] move this Court for leave to amend their original complaint in this case by filing their First Amended Complaint. The grounds follow:

1. Under Rule 15(a), leave to amend a complaint is to be "freely given when justice so requires." The emphasis is on "freely given," and courts have repeatedly explained that this provision governing amended pleadings is to be liberally construed in favor of permitting amendments. Absent factors counseling against permitting the amendment – such as dilatoriness

[1] Senators Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, Van de Putte, West, Whitmire, and Zaffirini

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in filing, bad faith, or efforts to cause undue delay in the pending proceedings – pleading amendments should be permitted. *See, e.g., Lowrey v. Texas A&M University System*, 117 F.3d 242, 245 (5th Cir. 1997); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962).

2. The focus of the proposed changes to the plaintiffs' original complaint is the issue of the unprecedented threats, fines, and other sanctions that the Lieutenant Governor and a group of Senators remaining in Austin seek to impose on the eleven plaintiff Senators.[2] *See* First Amended Complaint ¶¶ 30-36 (factual allegations), 41 (adding Section 5 claim under Count I on effect of fines and sanctions on qualifications for holding elective office), and 52-53 (adding as Count V federal constitutional claims concerning fines, threats of arrest, and sanctions). The request for relief also is modified to conform to the new claims in the amended complaint.

3. None of the factors counseling against permitting the requested amendment is present here. The sanctions that form the heart of the additions to the original complaint were imposed by actions taken on August 12th and 15th, shortly after the filing of the original complaint; the eleven Senators are acting within a week of those actions to add the federal legal issues raised by them to this lawsuit. Thus, there is no dilatoriness. Further, the fines, sanctions, and threats of arrest are part and parcel of the whole unprecedented enterprise underway in the Texas Legislature with respect to congressional redistricting. Solely for purposes of passing a statewide congressional redistricting bill – without any legal invalidity in the current operational plan and without any state law mandate to act – the leadership and a group of members of the Texas Senate have abandoned the traditional practice of abiding by the 2/3 rule in such situations and illegally adopted a whole new series of sanctions designed to force the acquiescence of those

[2] The amended complaint also corrects a clerical error in the spelling of "Harlingen," *see* First Amended Complaint ¶ 13, and inserts a clarifying sentence on the benchmark date in Texas under Section 5 of the Voting Rights Act, *see* First Amended Complaint ¶ 29 (new third sentence).

who represent minorities in a bill that would damage their interests. There is no bad faith in bringing all those related issues into a single proceeding on the application of federal law to such actions. Finally, adding the claims sought to be raised in the first amended complaint would not delay the current proceedings. No hearing has been set on any of the matters already in issue.

4. Submitted simultaneously with this motion for leave to file an amended complaint is the proposed First Amended Complaint.

Based upon the foregoing matters, the eleven Senator plaintiffs urge the Court to grant this motion and order their First Amended Complaint filed by the Clerk.

Respectfully submitted,

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Defendants.	)	

FIRST AMENDED COMPLAINT

Plaintiffs allege that:

1. This action is brought pursuant to Sections 2, 5 and 12(d) of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973, 42 U.S.C. §1973c, 42 U.S.C. §1973j(d), and pursuant to 42 U.S.C. §1983, to enforce rights guaranteed by the United States Constitution.

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§1331, 1343, 1344, 2201, and 2202. This Court also has jurisdiction pursuant to 42 U.S.C. §§1973c, 1973j(d), and 1973j(f).

3. Plaintiffs are duly elected members of the Texas Senate. Plaintiff Barrientos is Hispanic and resides in Travis County. Plaintiff Ellis is African-American. Plaintiff Gallegos is

Hispanic. Plaintiff Whitmire is Anglo. Plaintiffs Ellis, Gallegos and Whitmire reside in Harris County. Plaintiff Hinojosa is Hispanic and resides in Hidalgo County. Plaintiff Lucio is Hispanic and resides in Cameron County. Plaintiffs Madla and Van de Putte are Hispanic and reside in Bexar County. Plaintiff Shapleigh is Anglo and resides in El Paso County. Plaintiff West is African-American and resides in Dallas County. Plaintiff Zaffirini is Hispanic and resides in Webb County. Plaintiffs bring this case as individual voters and in their official capacities as duly elected members of the Texas State Senate.

4. Plaintiffs represent the eleven state senate districts in Texas with the highest number of minority voters of any of the 31 state senate districts. Ten of the eleven state senate districts represented by plaintiffs are majority-minority in total population, and the eleventh, represented by Senator Barrientos, is approximately 45% minority in total population.

5. The defendant State of Texas is a state of the United States of America.

6. The defendant State of Texas is subject to the provisions of Section 5 of the Voting Rights Act, 42 U.S.C. §1973c.

7. Defendant Governor Rick Perry is the duly elected Governor of the State of Texas and the chief executive officer of the State. Defendant Perry is sued in his official capacity.

8. Defendant David Dewhurst is the duly elected Lieutenant Governor of the State of Texas and is the presiding officer of the Texas Senate. Defendant Dewhurst is sued in his official capacity.

9. Section 5 of the Voting Rights Act provides that any "voting qualification, or prerequisite to voting, or standard, practice or procedure with respect to voting" different from that in force or effect in the State of Texas, on November 1, 1972, may not be lawfully implemented unless the State of Texas obtains a declaratory judgment from the United States

District Court for the District of Columbia that the change affecting voting does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, except that the change may be implemented without such judgment if it has been submitted to the Attorney General of the United States and no objection has been interposed by the Attorney General within sixty days. See 42 U.S.C. §1973c.

10. The defendants have authority under Texas law to enact or administer "voting qualifications, or prerequisites to voting, or standards, practices or procedures with respect to voting," (42 U.S.C. §1973c) different from those in force or effect on November 1, 1972.

FACTS

Procedural History

11. Since November 1, 1972, the coverage date of the special provisions of the Voting Rights Act, the State of Texas has gone through three congressional redistricting cycles following the release of the decennial census.

12. In the redistricting cycles following release of the 1980 and 1990 census, the State of Texas followed certain practices and procedures with respect to enacting a new congressional map. In the post-1980 and post-1990 cycles, for example, the State of Texas declined to exercise its discretion to undertake congressional redistricting once a valid congressional map was implemented that met all legal requirements. Indeed, in 1996, a federal court struck down Texas' congressional map, imposed a map of its own, and ordered the Texas Legislature to enact a new map in the 1997 legislative session. Even in those circumstances, the Texas Legislature declined to exercise its discretion to redistrict and the court-ordered plan remained in effect for the 1998 and 2000 elections.

13. In the 1981, and 1991, and 2001 redistricting cycles, the State of Texas conducted numerous public hearings across the State to give voters and other members of the general public an opportunity to participate in the political process that would lead to the formation of new voting constituencies as a result of redistricting. In connection with the 2001 cycle, for example, the full redistricting committees of the Texas House and the Texas Senate conducted public field hearings on redistricting jointly in the following cities: Abilene, Arlington, Austin, Dallas, El Paso, Tyler, Houston, Harlingen, Midland, Houston, and San Antonio.

14. Prior to 2003, the redistricting process followed by the State of Texas involved the full Redistricting Committees of the House and Senate conducting joint field hearings across the State. The redistricting practices and procedures used to conduct redistricting hearings in the State of Texas prior to 2003, by having all Members of the Senate and House Redistricting Committee to conduct hearings together, permitted each and every member of the House and Senate redistricting committees to hear all of the testimony from all of the witnesses. The process of conducting joint hearings also permitted all members of the House redistricting committee to hear the testimony presented to the Senate redistricting committee and vice versa.

15. In its 2001 regular session, the Texas Legislature failed to enact a congressional redistricting map. In July 2001, the Governor of Texas announced that he would not call a special session of the Legislature because to do so would be a waste of taxpayer dollars. He further announced that as a result of his decision, the issue of congressional redistricting would be resolved by the courts and not by the Legislature.

16. In November 2001, a three-judge federal court imposed a congressional plan for the State of Texas. *Balderas v. State of Texas*, No. 6:01CV158 (E.D. Tex., November 14, 2001). The three-judge court's plan was not an interim one, imposed for the 2002 elections only.

Instead, the three-judge court stated that the map being imposed would be "the remedial congressional redistricting plan for the State of Texas." *Id.* (emphasis added). The judgment imposing a court-drawn map in *Balderas* neither ordered the State of Texas to enact a new congressional map nor did it encourage the State legislature to do so.

17. Although the *Balderas* plaintiffs appealed the decision of the three-judge court to the United States Supreme Court, the State of Texas did not appeal. Instead, the State of Texas filed a motion to dismiss or affirm the three-judge court's decision. On June 17, 2002, the United States Supreme Court summarily affirmed the decision of the three-judge court. See *Balderas v. State of Texas*, 536 U.S. 919 (2002). The three-judge court's congressional map governed the 2002 elections. There has been no finding or determination that the *Balderas* three-judge court's map is unconstitutional or unlawful in any way. Nor have any census data been released which show the districts ordered into effect by the three-judge court in *Balderas* to be malapportioned. Indeed, the Texas Attorney General has opined that the State of Texas need not redistrict its congressional districts at this time, and that the *Balderas* map could remain in effect for the entire decade. See Texas Attorney General Opinion No. GA-0063 April 23, 2003.

The 2003 Redistricting Efforts

18. During the 2003 regular session of the Texas Legislature, the Texas House proceeded with an effort to enact a new congressional map, but the Texas Senate did not take up the issue. The efforts of the Texas House were thwarted, however, when certain members of the Texas House broke quorum, precluding the House from taking up the congressional redistricting bill in the regular session. The 2003 regular session, therefore, ended without any congressional redistricting bill being passed.

19. On June 18, 2003, Texas Governor Rick Perry announced that a special session of the Texas Legislature would be convened for the purpose of enacting a new congressional map. The House promptly proceeded to enact a new congressional map. However, the Texas Senate attempted, but failed, to pass a new congressional map in the special session because of a long-standing practice of the Texas Senate that requires a 2/3 majority of those in the Senate to agree to take up a congressional redistricting bill (hereafter the "2/3 Rule").[1]

20. The State of Texas' decision to undertake congressional redistricting in 2003, despite the fact that it is operating under a legal plan ordered into effect for the decade by a three-judge federal court and affirmed on direct appeal by the United States Supreme Court, is unprecedented.

21. Moreover, the manner in which the State has proceeded with its redistricting efforts in 2003 substantially departs from the normal procedural sequence it has followed historically. For instance, the Senate and House have failed to conduct joint redistricting hearings as had occurred in prior redistricting cycles. Instead, the House and Senate each conducted separate field hearings. Thus, the testimony of hundreds of witnesses who attended and testified at the House field hearings was never heard or considered by the Senate members, and the testimony of hundreds of witnesses who attended the Senate hearings was not heard or considered by House members.

22. The number of hearings, the location of the hearings and the organization of the hearings has also been a substantial departure from prior redistricting efforts. For instance, the

[1] In the Senate, a 2/3 vote is ordinarily necessary to take up a bill out of order. Consequently, it has been the practice in the Texas Senate for a Member to file a bill, known as "a blocker bill", as the first piece of legislation in the session. The presence of a blocker bill has the effect of requiring 2/3 of the Senate to vote to take up a bill out of order and to consider it ahead of the blocker bill. In the 31 Member Senate, eleven Senators can effectively prevent a bill from reaching the floor as a result of the 2/3 Rule. On July 14, 2003, Republican Senator Bill Ratliff announced that he would join with at least 10 other Democrats to prevent congressional redistricting from reaching the Senate floor. See Exhibit 12, hereto.

House Redistricting Committee refused to approve a motion made to conduct field hearings during the regular session. House Redistricting Committee Chairman Joe Crabb also questioned the value of holding public field hearings on redistricting in South Texas where most persons spoke Spanish, stating that since only a few Committee members spoke Spanish, most members of the Committee would be unable to understand what non-English speaking witnesses would be saying. Moreover, although the full fifteen-member House Redistricting Committee included two African American members and four Hispanics, not a single subcommittee was chaired by a minority group representative. In addition, the Committee failed to conduct any official field hearings in the Rio Grande Valley or in any city south of San Antonio. While the Committee attempted to hold an "unofficial" subcommittee hearing in Brownsville, those in attendance, primarily Hispanics, would not allow the meeting to proceed because the subcommittee lacked a quorum and the citizens there demanded an official hearing.

23. In addition to no longer holding joint hearings with the House, the Senate failed to conduct any field hearings in either far West Texas or East Texas. Thus, the Senate held no redistricting field hearings in El Paso or Tyler, two cities where the Senate had traveled to conduct redistricting field hearings in 2000.

24. Finally, the testimony of the public was largely ignored. In the House field hearings, for example, 96.5% of the 3103 persons who attended those hearings registered an opinion against the Texas Legislature undertaking any redistricting. On the Senate side, 92.1% of the 2982 the persons who registered a position on redistricting registered an opinion against redistricting. Over 6000 Texans attended these hearings in June and July of 2003. In spite of this widespread and overwhelming opposition to the State of Texas taking up congressional redistricting, the House and Senate Committees each proceeded to undertake redistricting

anyway and passed new congressional maps. However, as noted above, congressional redistricting legislation never reached the full Senate because a third of the Senators invoked the Senate's traditional 2/3 Rule. See page 6, note 1, *supra*.

The 2003 Second Special Session

25. Governor Rick Perry has now issued a proclamation calling a second special session for the purpose of considering congressional redistricting. Lieutenant Governor Dewhurst publicly announced that in the second special session, the extraordinary majority practice or procedure known as the 2/3 Rule, a long-standing practice of the Texas Senate that empowers the chamber's minority by requiring a 2/3 vote to open debate, will not be in effect. The defendants' decision to abandon the 2/3 Rule only applies to congressional redistricting legislation in the second called special session, and not to any other pieces of legislation that might come before the Senate.

26. There are 31 members of the Texas Senate; twelve Democrats (of which nine are minority) and nineteen Republicans (of which none are minority). If the 2/3 Rule is in place, any 11 members of the Texas Senate (35%) can join together and block a redistricting bill from being considered. The eleven plaintiffs-Senators who have brought this action wish to avail themselves of the protections of the 2/3 Rule, which has been available to other Senators in prior sessions when congressional redistricting legislation was considered.

27. The 2/3 Rule is a traditional practice or procedure of the Texas Senate that protects a minority group: racial, political or otherwise. There are nine minority group members of the Texas Senate, and all nine are Democrats. These nine Senators are among the eleven plaintiffs who have brought this action, and they have stated publicly that they are opposed to congressional redistricting being considered by the Texas Senate. The other two plaintiffs-

Senators (Shapleigh and Whitmire) are Anglo Democrats who also represent majority-minority districts. These eleven plaintiffs have left the State and their absence has deprived the Texas Senate of a quorum. These 11 Senators have executed sworn Declarations stating that their constituents' interests will be harmed if the protections of the 2/3 Rule are not available in any special sessions in 2003 or 2004. See Exhibits 1-11 hereto. These 11 Senators have also stated that the defendants' decision to abandon the 2/3 Rule is intended to have, and will in fact have, a discriminatory result on minority voters and officeholders on account of their race, color, or membership in a language minority group. *Ibid.*

28. If these eleven Senators could avail themselves of the protections afforded by the 2/3 Rule, minority voters and their elected Senators would be able to use the practice or procedure that other Anglo Senators have had the opportunity to use in the past to protect them and their constituents from the harmful effects of a new congressional plan. If the traditional practice or procedure of using the supermajority (2/3) Rule protections is in place, a simple majority of Senators would be insufficient to bring up congressional redistricting legislation. Changing or abandoning the traditional practice or procedure of a supermajority (2/3) Rule will mean that these Senators do not have the protection of a practice or procedure used in the past by Anglo Senators to require consensus, compromise and negotiation in considering any congressional redistricting legislation. Changing or abandoning the supermajority (2/3) Rule will render ineffective the representation that these Senators can provide to their constituents on congressional redistricting legislation.

29. In prior sessions the Texas Legislature has considered congressional redistricting in nine regular and special sessions since 1971: the 1971 regular session; the 1981 regular session; the 1981 special session; the 1991 regular session; the 1991 special session; the 1997 regular

session; the 2001 regular session; the 2003 regular session; and the first 2003 special session. In all but one of these instances (1981), a supermajority rule has been utilized and respected whenever the Texas Senate has considered congressional redistricting. Thus, as of the coverage date for Section 5 in Texas (*i.e.*, November 1, 1972), Texas employed a practice of using a blocker bill for statewide congressional redistricting legislation and has consistently used a supermajority (2/3) Rule for such legislation, with one exception, since the coverage date. The decision to do away with a 2/3 Rule in 2003 will harm minority voters and the ability of their elected representatives to protect their voting rights in the congressional redistricting process. As a result of the State's decision to abandon its traditional practices and procedures of having a supermajority 2/3 Rule for congressional redistricting, the nine black and Hispanic plaintiffs-Senators, as well as their constituents, are being deprived of the protections that the 2/3 Rule has afforded other legislators in prior sessions when congressional redistricting was being considered. As a result of the State's decision to abandon its traditional practices and procedures of having a supermajority 2/3 Rule for congressional redistricting, the minority voters in the two majority-minority state senate districts represented by Anglo Senators Shapleigh and Whitmore, also will be deprived of the protections that the 2/3 Rule has afforded other Senators in prior sessions when congressional redistricting was being considered.

Fines, threats of arrest, and other sanctions

30. The eleven plaintiff Senators have chosen to absent themselves from the Second Special Session called by the Lieutenant Governor in order to fully represent the interests of their constituents. As applied to the facts of this case, their continued absence is core political speech, fundamental to the right to freedom of speech. Under current circumstances, coercion to compel the Senators to attend the special session and be "present" there so that a quorum exists would be

tantamount to compelling the Senators to vote so that new legislation -- in the form of a new statewide congressional redistricting plan – would be passed and become law in Texas.

31. During the Second Special Session, the Lieutenant Governor, in concert with a group of Senators in attendance of the session at the State Capitol in Austin, Texas, has taken unprecedented steps to coerce the return of the absent Senators to the Senate floor.

32. On July 28, 2003, the Lieutenant Governor convened the Senate in response to the Governor's proclamation calling the second special session. Immediately, the Senators present voted to place a "call of the Senate," whereby the absent Senators were to be arrested by the Senate Sergeant-at-Arms and forcibly brought to the Senate floor in order to form a quorum. The Lieutenant Governor then promptly held a press conference, announcing that he had been provided informal written advice of that same date by the Attorney General of Texas that the absent Senators could be arrested by the Sergeant-at-Arms and certain unidentified designees "wherever they may be found." The Attorney General's advice also concluded that the Texas Department of Public Safety could conduct such arrests, notwithstanding a state district court judgment of August 4, 2003, declaring that such DPS arrests of absent members of the Texas House of Representatives would be illegal.

33. Two weeks later, on August 12, 2003, the Lieutenant Governor and most of the Senators still in attendance at the State Capitol met in secret for several hours, claiming that the meeting was a Senate Republican Caucus meeting with a non-member invited guest. Then, the identical group of officeholders came into open session in the Senate chambers and met for less than four minutes. In that meeting, the group of Senators, along with the Lieutenant Governor, approved a motion that would impose substantial monetary penalties on the eleven absent Senators, which, if the second special session were to run its course, would total $57,000 per

Senator. The adopted motion expressly conditioned the return of the absent Senators to the Senate floor and participation as voting members of the Senate on the full payment of those fines – and their payment from the Senators' personal funds.

34. The same group of officeholders that imposed the fines on August 12, 2003, met again on August 15, 2003. They re-adopted the August 12th motion, then voted to suspend an extensive list of senatorial privileges (purchasing, mail, travel, use of conference and other rooms in the Capitol, parking, subscriptions, printing, cell phones, and staff floor passes) for the eleven Senators until full payment of the fines levied on August 12th. The proponent of the motion that carried the day – the Senator Pro Tem of the Senate – expressly affirmed that the purpose of the August 12th and August 15th sanctions imposed on the absent Senators was to "compel them to return." As a final step, the group of Senators and the Lieutenant Governor extended the reach of these fines to some indefinite point beyond the conclusion of the second special session.

35. None of the sanctions imposed on August 12th and August 15th rest on any existing Senate Rules.

36. In sum, the state, through the Lieutenant Governor and the Senators voting for the extensive and intrusive sanctions, have now added an extensive set of conditions to the continued holding of elective office by the eleven absent Senators which heretofore did not exist and which find no authorization in the plain words of the governing rules of the Texas Senate.

COUNT I

37. By changing its redistricting practices and procedures, and no longer permitting members of the Texas Senate to avail themselves of the protections afforded by the 2/3 Rule, the

defendants are seeking to enact or administer a new voting "standard, practice or procedure" within the meaning of Section 5 of the Voting Rights Act, 42 U.S.C. §1973c.

38. Changes in redistricting practices or procedures, such as the abandonment of a supermajority requirement as a prerequisite to considering congressional redistricting legislation, are subject to the preclearance requirements of Section 5. Such changes directly impact voters' abilities to affect the congressional districts in any redistricting plan that is considered or which may eventually pass the Senate. Changes in redistricting procedures thus effectuate changes in voting constituencies, which in turn can affect the ability of candidates "to become or remain holders of elective office." 28 C.F.R. 51.13(g)(Regulations of the United States Department of Justice Under Section 5 of the Voting Rights Act Listing Examples of Covered Changes). Because sponsors of redistricting legislation in the Texas House and Senate in 2003 have made clear that the aim of their redistricting legislation is to replace Democratic officeholders with Republicans, changes in redistricting procedures will have a profound effect on the ability of candidates "to become or remain holders of elective office."

39. The changes in redistricting procedures here, the unprecedented mid-decade redistricting when a legally valid map is in place, as well as the abandonment of the supermajority (2/3) Rule, will also bear on the ability of the 11 plaintiffs-Senators and the voters in their districts to participate effectively in the political process. Changes that affect the ability of voters to participate effectively in the political process are subject to Section 5. See *Morse v. Republican Party of Virginia,* 517 U.S. 186, (1996), 116 S. Ct. 1186, 1200-1201.

40. By the unprecedented use of special sessions to redistrict in the absence of (A) new census data showing blatant violations of one-person, one-vote in the current plan, or (B) any court order finding the current plan is either unconstitutional or illegal, the defendants are

seeking to enact or administer a new voting "standard, practice or procedure" within the meaning of Section 5 of the Voting Rights Act, 42 U.S.C. §1973c.

41. By imposing, through the sanctions, new qualifications and requirements for holders of elective office to continue in the positions to which they were elected, the defendants are seeking to enact or administer a new voting "standard, practice or procedure" within the meaning of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

42. The defendants have not obtained the requisite preclearance of the voting changes identified in paragraphs 25-36, above, from the Attorney General of the United States, pursuant to Section 5 of the Voting Rights Act, as amended, 42 U.S.C. §1973c.

43. No judgment has been obtained from the United States District Court for the District of Columbia pursuant to Section 5 of the Voting Rights Act, as amended, 42 U.S.C. §1973c, declaring that the voting changes identified in paragraphs 25 through 36, above, have neither the purpose nor the effect of denying or abridging the right to vote on account of race or color.

44. The failure of the defendants to obtain the preclearance required by Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c, as described in the preceding paragraphs, renders the voting changes identified in paragraphs 25-36, above, legally unenforceable unless and until preclearance is obtained.

COUNT II

45. Plaintiffs reallege the factual allegations set forth in paragraphs 9 through 36, *supra*.

46. The defendants' decision to abandon the 2/3 Rule will harm minority voters and the ability of their elected representatives to protect their voting rights in the congressional redistricting process. As a result of the State's decision to abandon its traditional practices and procedures of the 2/3 Rule, the black and Hispanic Senators, as well as their constituents, are

being deprived of the protections that the 2/3 Rule has afforded other legislators in prior sessions when congressional redistricting is being considered. The decision to abandon the 2/3 Rule will result in discrimination on account of race, color, or membership in a language minority group in violation of Section 2 of the Voting Rights Act, 42 U.S.C. §1973.

COUNT III

47. Plaintiffs reallege the factual allegations set forth in paragraphs 9 through 36, *supra*.

48. The defendants' decision to abandon the 2/3 Rule is aimed at a protected class of persons, minority voters and their elected Senators, in violation of 42 U.S.C. §1983, and the Fourteenth and Fifteenth Amendments to the United States Constitution. The defendants' decision to abandon the 2/3 Rule is motivated by a racially discriminatory purpose and will have a racially discriminatory effect in violation of 42 U.S.C. §1983, and the Fourteenth and Fifteenth Amendments to the United States Constitution.

COUNT IV

49. Plaintiffs reallege the factual allegations set forth in paragraphs 9 through 36, *supra*.

50. On August 7, 2003, defendants Perry and Dewhurst filed a petition in the Supreme Court of Texas. The extraordinary and unprecedented action of defendants Perry and Dewhurst seeks an Order from the state's highest court forcing the 11 Senators-plaintiffs to return from Texas and to attend the current special session. Never in the history of the State have state officeholders taken such actions against any Senators who either broke quorum or otherwise failed to attend any legislative session or portion thereof. Forcing these Senators to return to the State will harm the representational interests of these plaintiffs-Senators and their constituents. By their presence in New Mexico, these plaintiffs-Senators are exercising their First Amendment rights of political speech and are providing their constituents, who are overwhelmingly opposed

to congressional redistricting, with effective representation on this issue. Forcing these Senators to come back to Texas without the protections of the 2/3 Rule will result in the enactment of a new congressional map, which is contrary to the views and interests held by these plaintiffs-Senators and their constituents. Forcing these Senators to return to Texas and thereby enable a congressional redistricting bill to pass the Senate without the protections of the traditional 2/3 Rule is tantamount to forcing these Senators to violate the representational interests of their constituents, in violation of the First, Fourteenth and Fifteenth Amendments to the United States Constitution.

51. Defendants Perry and Dewhurst's actions are aimed at a protected class of persons, minority voters and their elected Senators, in violation of 42 U.S.C. §1983, and the First, Fourteenth and Fifteenth Amendments to the United States Constitution. Defendants Perry and Dewhurst's actions to use the judicial machinery of the State of Texas to solve a political and legislative problem is motivated by a racially discriminatory purpose and will have a racially discriminatory effect in violation of 42 U.S.C. §1983, and the First, Fourteenth, and Fifteenth Amendments to the United States Constitution.

COUNT V

52. Plaintiffs reallege the factual allegations set forth in paragraphs 9 through 36, *supra*.

53. The intent and overt threats to arrest the eleven Senators and the additional sanctions imposed on August 12th and 15th, including the requirement that the Senators pay from their own personal funds for the privilege of voting in the Senate, are being imposed in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the Equal Protection Clause of the United States Constitution, the First Amendment to the United States Constitution (applicable through the Due Process Clause of the Fourteenth Amendment), the Ex

Post Facto Clause of the United States Constitution, and the Bill of Attainder Clause of the United States Constitution, and the eleven plaintiff Senators assert those violations pursuant to 42 U.S.C. § 1983.

WHEREFORE, plaintiffs pray that a court of three judges be convened pursuant to 42 U.S.C. §1973c and 28 U.S.C. §2284, and that, thereafter, the three-judge court as to Count I and a single judge as to the remaining counts issue a judgment:

(1) Declaring that the State of Texas's decision to undertake congressional redistricting in 2003, despite the fact that it is operating under a legal plan ordered into effect for the decade by a three-judge federal court and affirmed on direct appeal by the United States Supreme Court, constitutes a change affecting voting within the meaning of Section 5 of the Voting Rights Act, as amended, 42 U.S.C. §1973c, and is legally unenforceable because the voting change has not received the requisite Section 5 preclearance;

(2) Declaring that the State of Texas's unprecedented.decision to abandon the 2/3 Rule for congressional redistricting constitutes a change affecting voting within the meaning of Section 5 of the Voting Rights Act, as amended, 42 U.S.C. §1973c, and is legally unenforceable because the voting change has not received the requisite Section 5 preclearance;

(3) Declaring that the State of Texas's unprecedented imposition of extensive sanctions on the eleven Senators constitutes a change affecting voting within the meaning of Section 5 of the Voting Rights Act, as amended, 42 U.S.C. §1973c, and is legally unenforceable because the voting change has not received the requisite Section 5 preclearance;

(4) Declaring that the State's decision to abandon the 2/3 Rule for congressional redistricting in any special session, thereby depriving minority group Senators from utilizing the protections of the 2/3 Rule, violates the Fourteenth and Fifteenth Amendments to the United States Constitution and Section 2 of the Voting Rights Act, 42 U.S.C. §1973;

(5) Declaring that the direction to arrest, and the imposition of sanctions, against the eleven Senators violates the following provisions of the United States Constitution: the First Amendment; the Ex Post Facto Clause; the Bill of Attainder Clause; the Due Process Clause of the Fourteenth Amendment; and the Equal Protection Clause of the Fourteenth Amendment;

(6) Enjoining the defendants, their agents and successors in office, and all persons acting in concert or participation with them, from administering, implementing or considering any congressional redistricting proposals until preclearance of the unprecleared redistricting procedure is obtained;

(7) Enjoining the defendants, their agents and successors in office, and all persons acting in concert or participation with them, from administering or implementing, as a condition of holding elective office, any sanctions against the eleven Senators until preclearance of the unprecleared arrest and sanctions are obtained;

(8) If preclearance is obtained as prayed for above, enjoining the defendants from abandoning the 2/3 Rule on the grounds that the decision to do so is violative of Section 2 of the Voting Rights Act, 42 U.S.C. §1973 and 42 U.S.C. § 1983 and the First, Fourteenth, and Fifteenth Amendments to the United States

Constitution;

(9) If preclearance is obtained as prayed for above, enjoining the defendants from carrying through on either the arrests or sanctions against the eleven Senators on the grounds that the decision to do so is violative of 42 U.S.C. § 1983 and the following provisions of the United States Constitution: the First Amendment; the Ex Post Facto Clause; the Bill of Attainder Clause; the Due Process Clause of the Fourteenth Amendment; and the Equal Protection Clause of the Fourteenth Amendment;

(10) Ordering the defendants either to seek a declaratory judgment from the United States District Court for the District of Columbia or to submit to the Attorney General for administrative review pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c, the unprecleared changes identified herein;

(11) Awarding plaintiffs all costs and disbursements in maintaining this action, and all reasonable attorneys' fees, pursuant to 42 U.S.C. §1973l(e) and 42 U.S.C. §1988; and

(12) Granting such further relief as the interests of justice may require.

Respectfully submitted,

Renea Hicks by g/l permission

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